

BOIES SCHILLER FLEXNER LLP
Mark C. Mao (CA Bar No. 236165)
mmao@bsfllp.com
44 Montgomery Street, 41st Floor
San Francisco, CA 94104
Telephone: (415) 293 6858
Facsimile: (415) 999 9695

SUSMAN GODFREY L.L.P.
William Christopher Carmody (pro hac vice)
bcarmody@susmangodfrey.com
Shawn J. Rabin (pro hac vice)
srabin@susmangodfrey.com
1301 Avenue of the Americas, 32nd Floor
New York, NY 10019
Telephone: (212) 336-8330

MORGAN & MORGAN
John A. Yanchunis (pro hac vice)
jyanchunis@forthepeople.com
Ryan J. McGee (pro hac vice)
rmcgee@forthepeople.com
201 N. Franklin Street, 7th Floor
Tampa, FL 33602
Telephone: (813) 223-5505

*Attorneys for Plaintiffs; additional counsel
listed in signature blocks below*

QUINN EMANUEL URQUHART &
SULLIVAN, LLP
Andrew H. Schapiro (*pro hac vice*)
andrewschapiro@quinnemanuel.com
191 N. Wacker Drive, Suite 2700
Chicago, IL 60606
Telephone: (312) 705-7400
Facsimile: (312) 705-7401

Stephen A. Broome (CA Bar No. 314605)
stephenbroome@quinnemanuel.com
Viola Trebicka (CA Bar No. 269526)
violatrebicka@quinnemanuel.com
865 S. Figueroa Street, 10th Floor
Los Angeles, CA 90017
Telephone: (213) 443-3000
Facsimile: (213) 443-3100

Jomaire A. Crawford (admitted *pro hac vice*)
jomairecrawford@quinnemanuel.com
51 Madison Avenue, 22nd Floor
New York, NY 10010
Telephone: (212) 849-7000
Facsimile: (212) 849-7100

*Attorneys for Defendant; additional counsel
listed in signature blocks below*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO,
individually and on behalf of all similarly
situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No. 4:20-cv-03664-YGR-SVK

**JOINT SUBMISSION RE: SEALING
PORTIONS OF ORDER ADOPTING IN
PART AND MODIFYING IN PART THE
SPECIAL MASTER'S REPORT AND
RECOMMENDATION ON REFERRED
DISCOVERY ISSUES RE
PRESERVATION PLAN (DKT. 587)**

Referral: Hon. Susan van Keulen, USMJ

1 May 31, 2022

2 Submitted via ECF

3 Magistrate Judge Susan van Keulen
4 San Jose Courthouse
5 Courtroom 6 - 4th
6 Floor 280 South 1st
7 Street San Jose, CA
8 95113

7 Re: Joint Submission Re: Sealing Portions of Order Adopting in Part and
8 Modifying In Part the Special Master's Report and Recommendation on
9 Referred Discovery Issues re Preservation Plan (Dkt. 587) in Response to Dkt.
589
10 *Brown v. Google LLC*, Case No. 4:20-cv-03664-YGR-SVK (N.D. Cal.)

10 Your Honor:

11 Pursuant to Your Honor's May 20, 2022 Redaction Order (Dkt. 589) regarding sealing the
12 Order Adopting in Part and Modifying In Part the Special Master's Report and Recommendation
13 on Referred Discovery Issues re Preservation Plan (Dkt. 587), Plaintiffs and Google LLC
14 ("Google") jointly submit this statement.

Google respectfully seeks to seal the following portions of the Order Adopting in Part and Modifying In Part the Special Master’s Report and Recommendation on Referred Discovery Issues re Preservation Plan (Dkt. 587) (“Order”), which contain Google’s confidential and proprietary information regarding highly sensitive features of Google’s internal systems and operations that Google does not share publicly, including various types of Google’s internal projects, identifiers, data signals, and logs, and their proprietary functionalities, that Google maintains as confidential in the ordinary course of its business and is not generally known to the public or Google’s competitors. This information is highly confidential and should be protected.

This Administrative Motion pertains to the following information contained in the Order:

Document	Portions to be Filed Under Seal	Party Claiming Confidentiality
Order Adopting in Part and Modifying In Part the Special Master’s Report and Recommendation on Referred Discovery Issues re Preservation Plan (Dkt. 587)	Portions of Order at: Pages 7:20-21, 7:23-25, 8:14 Portions of Exhibit A to Order at: Pages 2-3	Google

The parties conferred on the proposed redactions to the Order. Plaintiffs take no position on sealing the proposed redactions.

I. LEGAL STANDARD

The common law right of public access to judicial records in a civil case is not a constitutional right and it is “not absolute.” *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 598 (1978) (noting that the “right to inspect and copy judicial records is not absolute” and that “courts have refused to permit their files to serve as reservoirs of . . . sources of business information that might harm a litigant’s competitive standing”). Sealing is appropriate when the information at issue constitutes “competitively sensitive information,” such as “confidential research, development, or commercial information.” *France Telecom S.A. v. Marvell Semiconductor Inc.*, 2014 WL 4965995, at *4 (N.D. Cal. Oct. 3, 2014); *see also Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002) (acknowledging courts’ “broad latitude” to “prevent disclosure of

1 materials for many types of information, including, but not limited to, trade secrets or other
 2 confidential research, development, or commercial information”).

3 **II. THE ABOVE IDENTIFIED MATERIALS EASILY MEET THE “GOOD CAUSE”**
 4 **STANDARD AND SHOULD ALL BE SEALED**

5 Courts have repeatedly found it appropriate to seal documents that contain medical
 6 information or “business information that might harm a litigant’s competitive standing.” *Nixon*, 435
 7 U.S. at 589-99; see also *Turner v. United States*, 2019 WL 4732143, at *9 (finding good cause to
 8 seal “confidential medical information”). Good cause to seal is shown when a party seeks to seal
 9 materials that “contain[] confidential information about the operation of [the party’s] products and
 10 that public disclosure could harm [the party] by disclosing confidential technical information.”
 11 *Digital Reg. of Texas, LLC v. Adobe Sys., Inc.*, 2014 WL 6986068, at *1 (N.D. Cal. Dec. 10, 2014).
 12 Materials that could harm a litigant’s competitive standing may be sealed even under the
 13 “compelling reasons” standard. See e.g., *Icon-IP Pty Ltd. v. Specialized Bicycle Components, Inc.*,
 14 2015 WL 984121, at *2 (N.D. Cal. Mar. 4, 2015) (information “is appropriately sealable under the
 15 ‘compelling reasons’ standard where that information could be used to the company’s competitive
 16 disadvantage”) (citation omitted).

17 Here, the Order comprises confidential information regarding highly sensitive features of
 18 Google’s internal systems and operations that Google does not share publicly. Specifically, this
 19 information provides details related to the various types of Google’s internal projects, identifiers,
 20 data signals, and logs, and their proprietary functionalities. Such information reveals Google’s
 21 internal strategies, system designs, and business practices for operating and maintaining many of its
 22 important services while complying with legal and privacy obligations.

23 Public disclosure of the above-listed information would harm Google’s competitive standing
 24 it has earned through years of innovation and careful deliberation, by revealing sensitive aspects of
 25 Google’s proprietary systems, strategies, designs, and practices to Google’s competitors. That alone
 26 is a proper basis to seal such information. See, e.g., *Free Range Content, Inc. v. Google Inc.*, No.
 27 14-cv-02329-BLF, Dkt. No. 192, at 3-9 (N.D. Cal. May 3, 2017) (granting Google’s motion to seal
 28 certain sensitive business information related to Google’s processes and policies to ensure the

1 integrity and security of a different advertising system); *Huawei Techs., Co. v. Samsung Elecs. Co.*,
2 No. 3:16-cv-02787-WHO, Dkt. No. 446, at 19 (N.D. Cal. Jan. 30, 2019) (sealing confidential sales
3 data because “disclosure would harm their competitive standing by giving competitors insight they
4 do not have”); *Trotsky v. Travelers Indem. Co.*, 2013 WL 12116153, at *8 (W.D. Wash. May 8,
5 2013) (granting motion to seal as to “internal research results that disclose statistical coding that is
6 not publicly available”).

7 Moreover, if publicly disclosed, malicious actors may use such information to seek to
8 compromise Google’s internal systems and data structures. Google would be placed at an increased
9 risk of cybersecurity threats, and data related to its users could similarly be at risk. *See, e.g., In re*
10 *Google Inc. Gmail Litig.*, 2013 WL 5366963, at *3 (N.D. Cal. Sept. 25, 2013) (sealing “material
11 concern[ing] how users’ interactions with the Gmail system affects how messages are transmitted”
12 because if made public, it “could lead to a breach in the security of the Gmail system”). The security
13 threat is an additional reason for this Court to seal the identified information.

14 The information Google seeks to redact is the minimal amount of information needed to
15 protect its internal systems and operations from being exposed to not only its competitors but also
16 to nefarious actors who may improperly seek access to and disrupt these systems and operations.
17 The “good cause” rather than the “compelling reasons” standard should apply but under either
18 standard, Google’s sealing request is warranted.

19 **III. CONCLUSION**

20 For the foregoing reasons, Google respectfully requests that the Court seal the identified
21 portions of the Order.
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Respectfully,

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

/s/ Andrew H. Schapiro

Andrew H. Schapiro (admitted *pro hac vice*)
andrewschapiro@quinnemanuel.com
191 N. Wacker Drive, Suite 2700
Chicago, IL 60606
Tel: (312) 705-7400
Fax: (312) 705-7401

Diane M. Doolittle (CA Bar No. 142046)
dianedoolittle@quinnemanuel.com
Sara Jenkins (CA Bar No. 230097)
sarajenkins@quinnemanuel.com
555 Twin Dolphin Drive, 5th Floor
Redwood Shores, CA 94065
Telephone: (650) 801-5000
Facsimile: (650) 801-5100

Stephen A. Broome (CA Bar No. 314605)
stephenbroome@quinnemanuel.com
Viola Trebicka (CA Bar No. 269526)
violatrebicka@quinnemanuel.com
Crystal Nix-Hines (Bar No. 326971)
crystalnixhines@quinnemanuel.com
Alyssa G. Olson (CA Bar No. 305705)
alyolson@quinnemanuel.com
Marie Hayrapetian (CA Bar No. 315797)
mariehayrapetian@quinnemanuel.com
865 S. Figueroa Street, 10th Floor
Los Angeles, CA 90017
Telephone: (213) 443-3000
Facsimile: (213) 443-3100

Jomaire A. Crawford (admitted *pro hac vice*)
jomairecrawford@quinnemanuel.com
51 Madison Avenue, 22nd Floor
New York, NY 10010
Telephone: (212) 849-7000
Facsimile: (212) 849-7100

Josef Ansorge (admitted *pro hac vice*)
josefansorge@quinnemanuel.com
Xi ("Tracy") Gao (CA Bar No. 326266)
tracygao@quinnemanuel.com
Carl Spilly (admitted *pro hac vice*)
carlspilly@quinnemanuel.com
1300 I Street NW, Suite 900
Washington D.C., 20005
Telephone: (202) 538-8000
Facsimile: (202) 538-8100

BOIES SCHILLER FLEXNER LLP

/s/ Mark C. Mao

Mark C. Mao (CA Bar No. 236165)
mmao@bsflp.com
Sean Phillips Rodriguez (CA Bar No. 262437)
srodriguez@bsflp.com
Beko Reblitz-Richardson (CA Bar No. 238027)
brichardson@bsflp.com
44 Montgomery Street, 41st Floor
San Francisco, CA 94104
Tel: (415) 293 6858
Fax: (415) 999 9695

James W. Lee (*pro hac vice*)
jlee@bsflp.com
Rossana Baeza (*pro hac vice*)
rbaeza@bsflp.com
100 SE 2nd Street, Suite 2800
Miami, FL 33130
Tel: (305) 539-8400
Fax: (305) 539-1304

William Christopher Carmody (*pro hac vice*)
bcarmody@susmangodfrey.com
Shawn J. Rabin (*pro hac vice*)
srabin@susmangodfrey.com
Steven Shepard (*pro hac vice*)
sshepard@susmangodfrey.com
Alexander P. Frawley (*pro hac vice*)
afrawley@susmangodfrey.com
SUSMAN GODFREY L.L.P.
1301 Avenue of the Americas, 32nd Floor
New York, NY 10019
Tel: (212) 336-8330

Amanda Bonn (CA Bar No. 270891)
abonn@susmangodfrey.com
SUSMAN GODFREY L.L.P.
1900 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067
Tel: (310) 789-3100

John A. Yanchunis (*pro hac vice*)
jyanchunis@forthepeople.com
Ryan J. McGee (*pro hac vice*)
rmcgee@forthepeople.com
MORGAN & MORGAN, P.A.
201 N Franklin Street, 7th Floor
Tampa, FL 33602

Jonathan Tse (CA Bar No. 305468)
jonathantse@quinnemanuel.com
50 California Street, 22nd Floor
San Francisco, CA 94111
Telephone: (415) 875-6600
Facsimile: (415) 875-6700

Attorneys for Defendant

Tel: (813) 223-5505
Fax: (813) 222-4736
Michael F. Ram (CA Bar No. 104805)
mram@forthepeople.com
MORGAN & MORGAN, P.A.
711 Van Ness Avenue, Suite 500
San Francisco, CA 94102
Tel: (415) 358-6913
Attorneys for Plaintiffs

ATTESTATION OF CONCURRENCE

I am the ECF user whose ID and password are being used to file this Joint Submission.
Pursuant to Civil L.R. 5-1(i)(3), I hereby attest that each of the signatories identified above has
concurred in the filing of this document.

Dated: May 31, 2022

By /s/ Andrew H. Schapiro
Andrew H. Schapiro
Counsel on behalf of Google LLC